

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CITY OF BELLEVUE, NEBRASKA,

Plaintiff,

vs.

PARADISE PARK, INC., HOWARD
HELM,

Defendants.

8:13CV139

MEMORANDUM AND ORDER

The above-captioned case was removed to this court from the District Court of Sarpy County. The notice of removal identifies 28 U.S.C. §§ 1334 and 1452 as the sole grounds for federal jurisdiction, and upon review of the Plaintiff's complaint, the court finds no other jurisdictional basis. Defendants filed a suggestion of bankruptcy, (Filing No. 11), and the matter was referred to the bankruptcy court for review. (Filing No. 12).

Chief Bankruptcy Judge Thomas L. Saladino filed findings and his recommendation on May 22, 2014. (Filing No. 13). Upon review of the bankruptcy court's docket filings, and consideration of the facts adduced during an evidentiary hearing, Judge Saladino found:

This is a simple contractual dispute. One of the defendants was a debtor in a Chapter 11 case arising after these contracts were entered into, but did not include the City of Bellevue or the contracts in its bankruptcy and gave no notice to the City of Bellevue. Accordingly, the City of Bellevue is not bound by the terms of PPI's confirmed reorganization plan, nor does the plan discharge PPI's obligation to the City of Bellevue. The City of Bellevue may pursue whatever rights and remedies it has against PPI to enforce that obligation. In addition, the contracts are not executory contracts. Even if they were, they were deemed rejected as part of the bankruptcy process and the City of Bellevue may pursue whatever rights and remedies it has against PPI.

(Filing No. 13, at CM/ECF pp. 10-11).

Judge Saladino concluded the plaintiff's complaint raises no issues to be resolved by the bankruptcy court, and the defendants' prior bankruptcy proceeding does not impact the resolution of the above-captioned case. Judge Saladino therefore recommends remand to the District Court of Sarpy County.

The parties have not objected to the findings and recommendation, and the deadline for objecting has passed. Upon de novo review, I find Judge Saladino correctly found the facts and applied the law. His findings and recommendation will therefore be adopted, and this case remanded.

IT IS ORDERED:

1. Chief Bankruptcy Judge Thomas L. Saladino's findings and recommendation, (Filing No. 13), are adopted.
2. This case is remanded to the District Court of Sarpy County pursuant to 28 U.S.C. § 1452 (b), and for lack of subject matter jurisdiction.
3. The clerk of the court shall mail a certified copy of this order and a copy of Judge Saladino's findings and recommendation, (Filing No. 13), to the District Court of Sarpy County.

June 16, 2014.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge